

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35956/35957

STATE OF IDAHO,)	2009 Unpublished Opinion No. 641
)	
Plaintiff-Respondent,)	Filed: October 15, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
BODIE SARGENT aka JOHNNY VITALE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Judgment of conviction and unified sentence of ten years, with four years determinate, for one count of burglary; judgment of conviction and consecutive unified sentences of ten years, with four years determinate, for Count I, ten years, with two and one-half years determinate, for Count III and ten years, with two and one-half years determinate, for Count IV, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Bodie Sargent was charged in two separate cases that are consolidated for purposes of appeal. Sargent was charged with one count of burglary in case number 35956, and with eight counts of burglary in case number 35957. Pursuant to a plea agreement, Sargent pled guilty to one count of burglary, Idaho Code § 18-1401, in case number 35956, and to three counts of burglary, I.C. § 18-1401, in case number 35957. The district court sentenced Sargent to ten years, with four years determinate in case number 35956. In case number 35957, the district

court sentenced Sargent to ten years, with four years determinate, for Count I, to run concurrently with the sentence in case number 35956; to ten years, with two and one-half years determinate, for Count III, to run concurrently with Count I and with the sentence in case number 35956; to ten years, with two and one-half years determinate, for Count IV, to be served consecutively with the sentence in Count III and concurrently with the sentence in case number 35956. Sargent filed an Idaho Criminal Rule 35 motion for reduction of sentence in case number 35957, which the district court denied. Sargent appeals, contending that the district court abused its discretion by imposing excessive sentences and by denying his Rule 35 motion.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007).

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by imposing the sentences or by denying Sargent's Rule 35 motion for reduction of sentence. Accordingly, Sargent's judgments of conviction and sentences are affirmed, as is the denial of his Rule 35 motion.